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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,589	01/21/2004	Judy A. Martin	23380.01	1124
37833	7590	03/01/2006		
LITMAN LAW OFFICES, LTD PO BOX 15035 CRYSTAL CITY STATION ARLINGTON, VA 22215			EXAMINER HENDERSON, MARK T	
			ART UNIT	PAPER NUMBER
			3722	

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SM

Office Action Summary	Application No. 10/760,589	Applicant(s) MARTIN, JUDY A.	
	Examiner Mark T. Henderson	Art Unit 3722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-17,19 and 20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-6,8-17,19 and 20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Attachment I</u> . |

DETAILED OFFICE ACTION

Faxing of Responses to Office Actions

In order to reduce pendency and avoid potential delays, TC 3700 is encouraging FAXing or responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers, which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into TC 3700 will be promptly forwarded to the examiner.

1. Claims 1, 8, 9, 19 and 20 have been amended for further examination. Claims 7, and 18 have been canceled.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re*

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Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-6, 8-17, 19 and 20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 10/685,406. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications disclose a calendar comprising a single sheet chart; a transparent cover disposed over the chart; and a monthly calendar joined to the chart.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 8-10, 17, 19, and 20 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Newberry et al in view of Ferdon (1,536,429).

Newberry et al discloses in Fig. 2, 3 and in Attachment I, a calendar comprising: a rigid unitary backing (20) defining a first section (20a) and a second section (20b); a single sheet (3), wherein the sheet can include any desirable indicia including “designs, and other graphic material” as stated in Col. 2, lines 38-40) disposed on the first section (20a) of the backing (20); a transparent protective plastic cover (40) disposed over the indicied sheet (3); a monthly calendar (60) disposed on the second section (20b) of the backing (20s); and an attachment member (50) for removably attaching the calendar (60) to the backing (20).

However, Newberry et al does not disclose: a chart forming a chart grid having vertical and horizontal parallel arranged intersecting lines forming rows and columns and defining a plurality of memorandum spaces for permanently recording of events, ; and a calendar having indicia showing seven parallel vertical rows intersecting seven parallel horizontal columns defining memorandum spaces for removably imprinting events displayed on the chart.

Ferdon discloses in Fig. 3, a chart sheet (10) having vertical and horizontal parallel arranged intersecting lines forming rows and columns and defining a plurality of memorandum spaces (21); and further having indicia (“AUGUST RECORD”) adjacent the memorandum spaces; and having a sheet surface capable of retaining indelible ink thereon.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Newberry et al’s calendar with a chart sheet having

intersecting rows and columns defining memorandum spaces as taught by Ferdon for providing an alternative chart display.

In regards to **Claim 1**, wherein the memorandum spaces are used for permanently recording birthdays; and wherein; a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. Therefore, the memorandum spaces of Newberry et al and Ferdon can be used to record any information as desired by the end user.

In regards to **Claims 2-5**, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include as many columns or rows as desired, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Therefore, it would have been obvious to use any desirable number of columns or rows, since applicant has not disclosed the criticality of having a particular number of rows/columns, and invention would function equally as well with any number.

In regards to **Claims 4-6, and 17**, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include any desirable indicia on the chart sheet, since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not

functionally related to the substrate, it will not distinguish the invention from the prior art in terms of patentability. The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an end user with a specific type of information document or form does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Therefore, it would have been obvious to place any type of indicia on the chart display, since applicant has not disclosed the criticality of particular indicia and how it relates to the substrate (sheet), and the invention would operate equally as well with any type of indicia.

In regards to **Claim 8**, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use any desirable material for the transparent protective cover, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Therefore, it would have been obvious to construct the protective cover with any desired material, since applicant has not disclosed in the specification or drawings (1-4B) the criticality of using a particular material, and invention would function equally as well with any desired transparent material.

In regards to **Claims 19 and 20**, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a holding clamp as shown by Newberry et al instead of a plurality of brackets or hooks, since the examiner takes Official notice of the equivalence of a holding clamp, and brackets or hooks for their use in removably holding or

attaching sheets and the selection of any of these known equivalents would be within the level of ordinary skill in the art.

4. Claims 11-13, 15 and 16 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Newberry et al in view of Ferdon and further in view of Roane (5,195,262).

Newberry et al as modified by Ferdon discloses a calendar comprising all the elements as disclosed in Claim 1, and as set forth above. However, Newberry et al does not disclose spaces disposed adjacent the monthly calendar sized and dimensioned for designating a current month and year.

Roane discloses in Fig.1, a calendar sheet comprising indicia showing seven parallel vertical rows intersecting seven parallel horizontal columns defining spaces for removably imprinting events displayed on the chart; having blank date spaces sized for writing a number (as seen in Fig. 1); and wherein the seven rows include a top row displaying indicia representing the days of the week and defining a horizontal legend ("JANUARY").

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Newberry et al's calendar with a calendar sheet having 7 x 7 row-column matrix defining spaces as taught by Roane for providing an alternative calendar display.

Allowable Subject Matter

Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-6, 8-17, 19 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

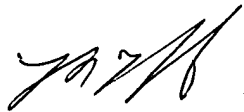
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Henderson whose telephone number is (571) 272-4477, and informal fax number is (571) 273-4477. The examiner can be reached on Monday-Friday from 9:00AM to 3:45PM. If attempts to reach the examiner by telephone are unsuccessful, the Examiner Supervisor, Boyer Ashley, can be reached at (571) 272-4502. The formal fax number for TC 3700 is (571) 273-8300.



MTH

February 25, 2006


BOYER D. ASHLEY
SUPERVISORY PATENT EXAMINER

FIG. 3

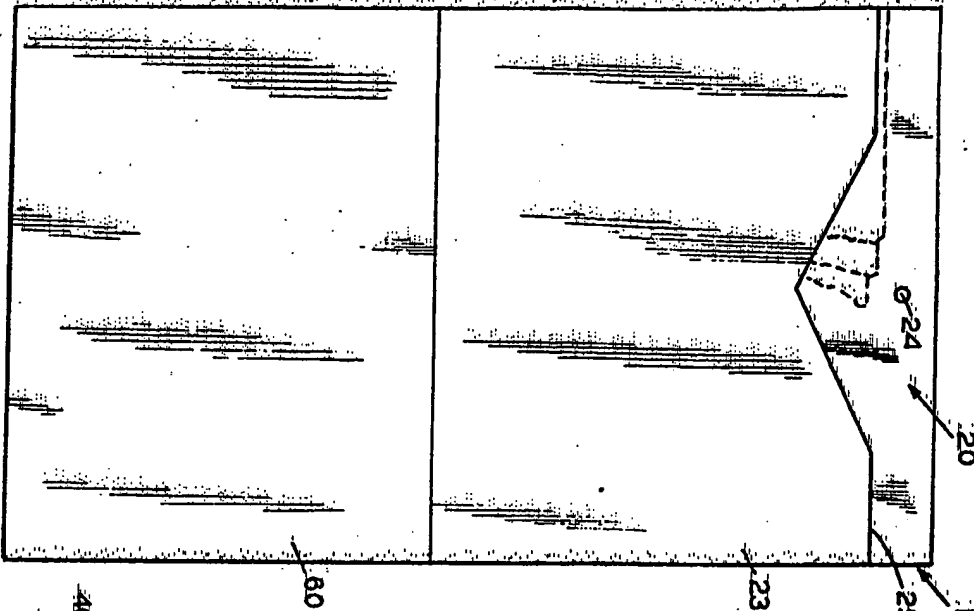


FIG. 2

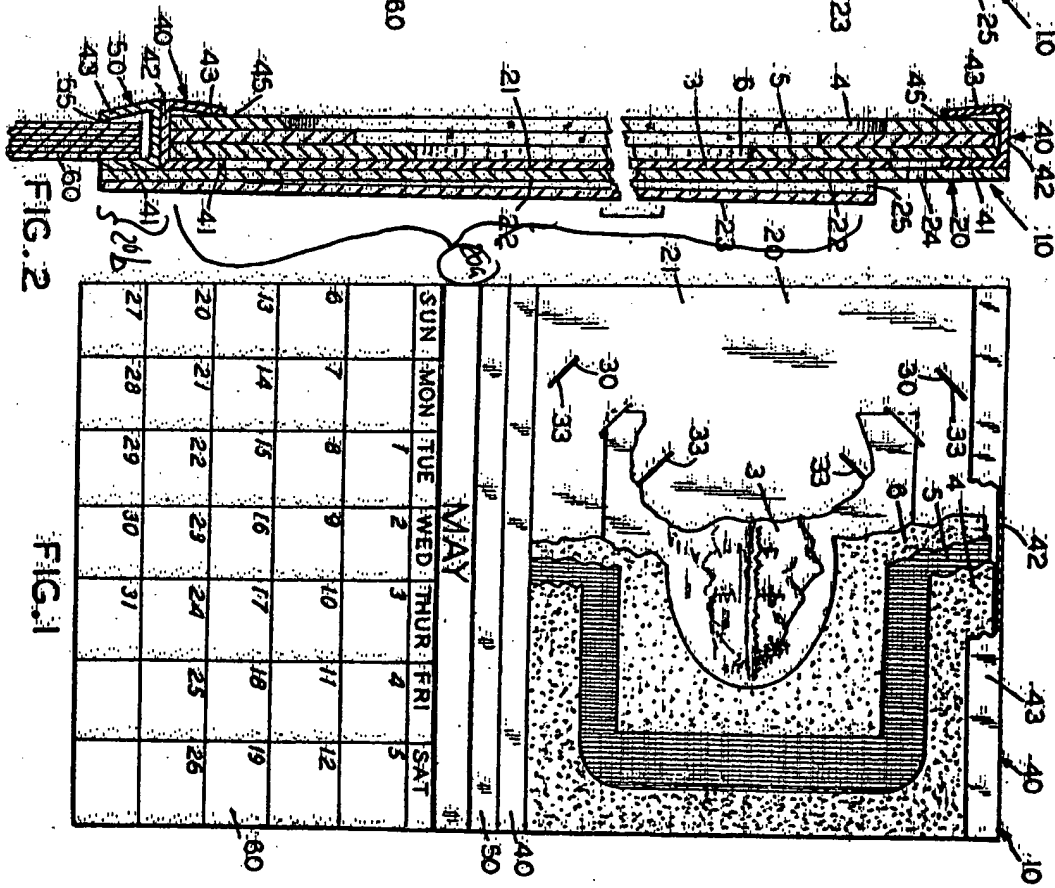


FIG. 1

